

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 STEVEN E. GREER, MD
6 an individual,

7 Plaintiff,

8 -against-

9 Dennis Mehiel, an individual, Robert
10 Serpico, an individual, The Battery Park
11 City Authority, a New York State authority,
12 Howard Milstein, an individual, Steven
13 Rossi, an individual, Janet Martin, an
14 individual, Milford Management, a New York
15 Corporation, and Mariners Cove Site B
16 Associates, a New York corporation.

17 Defendants.

18 - - - - -x

19
20 CONFIDENTIAL

21
22 DEPOSITION OF KIRK SWANSON
23 New York, New York
24 March 21, 2017

25
Reported by:
Pessi Goldstein
JOB NO. 121382

March 21, 2017
2:07 P.m.

DEPOSITION of KIRK SWANSON, a Non-Party Witness herein, held at the United States District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007, taken before Pessi Goldstein, a shorthand reporter and Notary Public within and for the State of New York.

* * *

APPEARANCES:

STEVEN E. GREER, MD
Plaintiff Pro Se

SHER TREMONTE
Attorneys for Defendants
Robert Michael Serpico
Battery Park City Authority
80 Broad Street
New York, NY 10004
BY: MICHAEL TREMONTE, ESQ.
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733 Third Avenue
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BY: DEBORAH RIEGEL, ESQ.

GISKAN SOLOTAROFF & ANDERSON
Attorneys for the Witness
11 Broadway
New York, NY 10004
BY: JASON SOLOTAROFF, ESQ.

ALSO PRESENT:
ALIX S. PUSTILNIK
General Counsel for BPCA

* * *

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

KIRK SWANSON - CONFIDENTIAL
KIRK SWANSON,

the witness herein, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY
DR. GREER:

Q. Please state your name for the record.

A. Kirk Swanson.

Q. Please state your address for the record.

A. 350 East 52nd Street, Apartment 6G, New York, New York 10022.

DR. GREER: Just for the record, here's a thumb drive of the video of the Robert Serpico files.

MR. TREMONTE: Before you begin, just like last time, I just want to make a record here that the conduct of this deposition is subject to the order entered on February 8, 2017, by Judge Cott, in particular, beginning at page 6, the section of that order caption

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2 deposition conduct.

3 In advance of the deposition I
4 provided a copy to Mr. Swanson's
5 counsel Mr. Solotaroff and provide an
6 opportunity to read it and is familiar
7 with the Court's rulings.

8 The deposition is also subject to
9 a confidentiality order that was
10 entered by Judge Cott and I can also
11 provide a copy to Mr. Solotaroff of
12 that deposition -- that document as
13 well. One of the provisions in there
14 specifies that the deposition
15 transcripts in their entirety are
16 marked confidential for 30 days pending
17 designations by the parties.

18 MR. SOLOTAROFF: Let me just make
19 one statement. So I've reviewed Judge
20 Cott's order and one issue I think that
21 needs to be flagged ahead of time is
22 that Mr. Swanson has his own case
23 against the defendants in this case,
24 and my understanding and my belief is
25 that this deposition is not, he is not

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2 being deposed on his own case but
3 rather on Mr. Greer's case.

4 And as a result, I am going to
5 object and direct Mr. Swanson not to
6 answer questions that have nothing to
7 do with the Greer case and are directed
8 at Mr. Swanson's own case.

9 Now, based on the order, I don't
10 believe, because it was presented to
11 Judge Cott, that Judge Cott has ruled
12 that questions about Mr. Swanson's own
13 case are off limits, however, I do
14 believe that those questions would be
15 improper. And if a party persists on
16 asking questions about Mr. Swanson's
17 own case that are unrelated to the case
18 here, we'll just go and see Judge Cott
19 and get a ruling.

20 MR. TREMONTE: I think a point
21 that may inform your thinking about
22 that, that I think is relevant, is in
23 the January 18th order issued by Judge
24 Cott at page 4 of 9, towards the bottom
25 of the page in connection with rulings

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2 that the Court was making at that time
3 on document request and I think it
4 applies to discovery generally that
5 Judge Cott held. And this is a quote:

6 "In sum, any discovery that does
7 not directly relate to Greer's eviction
8 or to his exclusions from the BPCA
9 board of directors meeting in July 2015
10 will be found as here to be irrelevant
11 and not proportional to the remaining
12 claims in this case."

13 So you may hear us lodge an
14 objection in the event that the
15 questioning veers off course consistent
16 with that order and I think that may be
17 helpful to you in evaluating your
18 objection.

19 MR. SOLOTAROFF: Yes, thank you.

20 DR. GREER: Objection, that was
21 dealing specifically with document
22 requests and, in fact, it should be
23 stricken from the record, the entire
24 ruling. The judge went out of his way
25 to say and I'm going to paraphrase, in

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2 this essence, Dr. Greer, I don't think
3 you understand that you can ask these
4 same questions in deposition, can't
5 you?

6 So that is an extremely
7 misleading summary of an order and it
8 absolutely does not, Judge Cott wants
9 me to ask the questions in deposition
10 so I strike all of that. So can we
11 begin?

12 MR. TREMONTE: You've made your
13 record and let me just make mine.

14 DR. GREER: Objection. Can we
15 begin?

16 MR. TREMONTE: No, I'm going to
17 make the record. In his February 8,
18 2017 order, page 7, the third bullet
19 point on the page, Judge Cott
20 specifically held, "Directions to the
21 deponent not to answer a question are
22 improper except on the basis of
23 privilege, on the grounds that the
24 Court has ordered that such information
25 is not subject to discovery, or to

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enable a party or deponent to present a motion to the Court or termination of the deposition," and then it goes on.

It is clear as day to us that the Court has held over the course of multiple rulings that there are any number of areas that are not subject to discovery in this case, either document discovery or testimony, and in our view that is entirely consistent with the section of the January 18th orders that I read which limits discovery to only items that directly relate to the eviction or the exclusion from the July 2015 meeting.

DR. GREER: I need to remind you that this order was just violated by you. The judge specifically said that you are not supposed to speak other than the word "objection," period.

MR. TREMONTE: We made our record.

DR. GREER: And if you continue to do that, you are flagrantly

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violating, this is exactly what Judge Cott wanted to preempt, a room full of lawyers stalling a deposition. You're not supposed to say anything other than the word "objection" and then why, and that is in his ruling. Okay? Can we begin?

Q. Thank you for showing up, Mr. Swanson. When did you begin your employment at the Battery Park City Authority?

A. November of 2012.

Q. What was your official job role and could you characterize what that means?

A. Initially deputy chief administrative officer and internal control officer. Shortly thereafter, I also took on the title of chief contracting officer and then in early 2014, I became vice president of administrative affairs.

Q. And when you first started in November who was your direct boss, who did you directly report to and did that change?

A. Direct report was to Phyllis Taylor who was the general counsel at the

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time.

Q. And did that stay the same while you were employed there or did --

A. Well, it changed when Phyllis retired or resigned, rather.

Q. And who did you report to after that?

A. Well, Bob Serpico was the acting president, it would have been Bob Serpico.

Q. So in what approximate time frame did you report to Robert Serpico?

A. That would be from Phyllis's retirement in the turn of the year until Shari Hyman took office, which would be late January, early February.

Q. While he was acting president?

A. Right.

Q. If a Battery Park City Authority employee came to you to lodge a work-related complaint, how would you handle it? To whom would you relay it to?

A. EEO officer or if it was something I could handle myself, I would do that.

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Q. Do you recall, who was the EEO officer?

MS. RIEGEL: Objection, just preserving it, it is outside the scope.

THE WITNESS: Do I answer?

MR. SOLOTAROFF: You can answer.

DR. GREER: Can she object too, he's not her client.

MR. SOLOTAROFF: It doesn't matter, you can answer.

Q. Who is the EEO officer, do you recall?

A. Nancy Harvey.

Q. And in the course of doing this job, did you have to relay and handle many complaints from BPCA employees about other BPCA employees, EEO type of complaints, did you ever have to deal with that often?

MS. RIEGEL: Objection, beyond the scope of permitted discovery.

A. Not too often, no.

Q. I can't pronounce her name, Elsa her real name is Elizabeth, but did Elsa or Elizabeth and her last name I can't

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2 pronounce now, maybe you can clarify, did
3 she come to you with any complaints?

4 MS. RIEGEL: Objection, beyond
5 the scope of permitted discovery.

6 MR. SOLOTAROFF: Objection, don't
7 answer. I think it's beyond the scope.

8 And, Dr. Greer, just so it's clear, I
9 have to protect Mr. Swanson's rights
10 and it's not in his interest to be
11 deposed on his case right now, so I'm
12 not trying to be difficult.

13 Q. I understand. It's relevant and
14 you will see why in a second. Let's talk
15 about Robert Serpico. At some point, to
16 your knowledge, what was his job role there
17 and how did it change, Robert Serpico?

18 MR. TREMONTE: Objection to form.
19 Objection beyond the scope of permitted
20 discovery.

21 MR. SOLOTAROFF: You can answer.

22 A. Robert was the chief financial
23 officer and also for a while the acting
24 president.

25 Q. And describe in detail how you

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2 would interact with him. Did you see him
3 every day or would it be an occasional
4 meeting once a week, how often would you
5 interact with Mr. Serpico?

6 A. Every day, often.

7 Q. Would those be face-to-face
8 meetings or would they be interoffice
9 e-mails?

10 A. Both.

11 Q. Now, I would attend the BPCA
12 board meetings as a reporter. When is the
13 first time you recall actually seeing me in
14 person, do you know?

15 A. I can't recall the first time. I
16 do recall you.

17 Q. And we've never actually met,
18 though, like to my knowledge this is the
19 first time I've seen you in person. Do you
20 recall us ever meeting and speaking before
21 today in person?

22 A. I don't think so, no. I remember
23 seeing you. Again, I was not a public
24 affairs officer, so.

25 Q. And you know me from, before I

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2 showed up at the BPCA board meetings, did
3 you know who I was and, if so, how or why?

4 A. I became aware of you over time.

5 Q. Through what medium? Was it
6 through the BatteryPark.TV reporting?

7 A. Just through staff.

8 Q. Okay. That's very interesting.
9 How would other staff at the BPCA alert you
10 to my existence? How did that happen?

11 A. Well, your blog would get
12 attention, people would talk about it. And
13 your presence over time, I became aware of
14 your presence at the meetings, at the board
15 meetings.

16 Q. Do you remember any specific
17 stories that come to mind or a specific
18 instance where something I did or wrote was
19 the talk of the office?

20 A. That happened numerous times.

21 Q. Can you recall any of the topics,
22 or was it a story about Robert Serpico or
23 something like that?

24 A. I can't state a specific one but
25 there were numerous incidents.

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2 Q. And describe the nature -- when
3 you would hear about me, what does that
4 mean? Would it be at the water cooler,
5 would it be during an official meeting?
6 Could you try to be a little more detailed
7 how you heard about me through discussion?

8 A. It would come up in any number of
9 situations, yes.

10 Q. Do you recall any e-mails going
11 back and forth that mentioned me or
12 BatteryPark.TV?

13 A. E-mails, I can't say certainly --

14 Q. Okay, now sometime --

15 A. -- that I was part of, I can't
16 say with certainty.

17 Q. All right.

18 A. I'm sure you probably were on one
19 or two.

20 Q. At some point I asked Mr. Serpico
21 before I have the dates, but late 2013 up
22 until like March of 2014, Mr. Serpico was
23 the acting president. During that time did
24 you either hear directly, see an e-mail
25 indirectly, did you have any evidence in

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2 late '13, early '14, that Mr. Serpico was
3 discussing the status of my residential
4 apartment lease, whether it was going to be
5 renewed or not, whether I was late in
6 payment, whether I was going to be evicted.
7 Do you recall anything?

8 MR. TREMONTE: Objection to form.

9 A. Repeat the question.

10 Q. Do you recall Robert Serpico in
11 late 2013, early 2014, discussing Steven
12 Greer's apartment at 200 Rector Place, 35F?
13 For example, he heard I was going to, the
14 lease would not be renewed or I was going to
15 be evicted or something like that. Do you
16 recall that?

17 MR. TREMONTE: Objection to form.

18 A. I can't say with certainty, no.

19 Q. You don't recall Mr. Serpico
20 saying, "Ah, Greer's going to be evicted,"
21 or something of that nature?

22 MR. TREMONTE: Objection.

23 MS. RIEGEL: Objection, asked and
24 answered.

25 A. In a general sense, yes. I can't

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1 KIRK SWANSON - CONFIDENTIAL
2 think of a specific -- well, I can't say
3 with certainty a specific moment, no.

4 Q. When did you first learn that
5 Milford Management or Steve Rossi or
6 Mariners Cove Site B would not be renewing
7 my lease at my apartment?

8 MR. TREMONTE: Objection to form.

9 A. I found out about that, I'm
10 fairly certain the date was January 21,
11 2014. I was approached by Kevin McCabe who
12 informed me that Steven Greer's lease was
13 not going to be renewed and that he would
14 be, I paraphrase, kicked out of his
15 apartment.

16 Q. Do you recall how that happened?
17 Was it in a face-to-face meeting, in an
18 office or over an e-mail?

19 A. It was, I can recall specifically
20 it was leaving Robin Forst's office, Kevin
21 approached me and just told me the news.

22 Q. Can you recall any other incident
23 where people at the Battery Park City
24 Authority level of management would be
25 acutely aware of the details of an

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2 individual resident's lease, a residential
3 lease, was this a common practice for people
4 in the office to talk about individual
5 residential leases, can you --

6 MR. TREMONTE: Objection to form.

7 A. No.

8 Q. This is the only time you can
9 recall that the BPCA executives were
10 discussing an individual tenant and how he
11 was not being renewed lease or something?

12 MR. TREMONTE: Objection to form.

13 A. There were discussions about
14 tenants who would ditch their apartment.

15 Q. Condo?

16 A. Yes, condo apartments and were
17 paying their rent. But, no, there were no
18 other incidents of what you're talking
19 about.

20 Q. Okay. Do you know who Linda
21 Soriero is, was she a co-worker of yours?

22 A. Yes.

23 Q. What did she do, what was her job
24 role?

25 A. She was Bob's assistant.

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2 Q. Do you know who Steve Rossi is?

3 A. Yes.

4 Q. What does he do?

5 A. He was a rep for real estate
6 entity and had dealings with the Battery
7 Park City Authority.

8 Q. Do you recall hearing about any
9 evidence at all, either directly, or
10 witnessing it or seeing a memo, or anything,
11 do you have any evidence that Steve Rossi
12 and Robert Serpico met in person?

13 MR. TREMONTE: Objection to form.

14 A. Oh, I would see them having lunch
15 all the time.

16 Q. Do you recall if you saw that
17 happening in 2013?

18 A. Yes.

19 Q. Where do you recall it might have
20 happened?

21 A. I have one vivid recollection,
22 two vivid recollections, in Au Bon Pain down
23 at the lobby of the --

24 Q. In 2013.

25 A. Yes.

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2 Q. Did that happen to be in the fall
3 or September or October, do you recall?

4 A. Sure, yes.

5 Q. I may have asked this a little
6 bit, but did any of my BatteryPark.TV
7 stories, I run the blog BatteryPark.TV and I
8 would write about scandals or issues going
9 on at the BPCA. Do you recall any of those
10 that really upset anyone in the office?

11 MR. TREMONTE: Objection to form.

12 A. Well, most of them did.

13 Q. Any one in particular, like one
14 that might have dealt with Robert Serpico's
15 issues?

16 A. You know I can't state anything
17 specifically other than general umbrage
18 taken at various meetings.

19 Q. Who is Seema Singh?

20 A. She was an attorney at the
21 Battery Park City Authority.

22 Q. And did you and her ever have any
23 conflicts or was she ever upset with how you
24 were doing your job?

25 MS. RIEGEL: Objection, beyond

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1 KIRK SWANSON - CONFIDENTIAL
2 the scope of permitted discovery.

3 MR. SOLOTAROFF: I'm going to
4 direct him not to answer.

5 Q. Well, this address you mention
6 it, tell me what you can, what your lawyer
7 is comfortable with, you're suing the BPCA,
8 why? Whatever you're --

9 MS. RIEGEL: Objection, beyond
10 the scope of permitted discovery.

11 DR. GREER: It's public
12 information.

13 MR. SOLOTAROFF: Yes, again, I
14 don't want Mr. Swanson somehow to say
15 something that would be held against
16 him in his own deposition.

17 DR. GREER: Sure, I'm just trying
18 to put it on the record.

19 Q. Is it true that you were fired
20 from the BPCA and you are now suing?

21 A. Yes.

22 DR. GREER: That is all I have
23 for now.

24 MR. TREMONTE: Can we take a
25 quick break?

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2 MR. SOLOTAROFF: Sure.

3 ***

4 (Whereupon, a recess was taken
5 at this time.)

6 ***

7 Q. Mr. Swanson, I didn't quite ask
8 this right. Do you believe, is it your
9 opinion that Robert Serpico was involved in
10 my eviction or non-renewal of my lease, and
11 if so, why?

12 MR. TREMONTE: Objection to form.

13 A. Yes, almost immediately
14 afterwards Kevin and I were down at the far
15 end of that hall closer to Bob's office and
16 Bob crossed our path. And I asked Bob if he
17 had anything to do with Greer not getting
18 his lease renewed, to which Bob visibly
19 smirked, shrugged and didn't answer my
20 question and walked away.

21 Q. Was that January 21st?

22 A. That was that same day.

23 Q. Thank you.

24 A. Shortly after Kevin approached
25 me.

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2 DR. GREER: Do you have any
3 questions?

4 MR. TREMONTE: Are you done?

5 DR. GREER: Yes.

6 EXAMINATION BY

7 MR. TREMONTE:

8 Q. Just following up on asking you
9 about that same event that you just
10 testified about. Just so I have it right,
11 so you had just spoken with Mr. McCabe; is
12 that correct?

13 A. Yes.

14 Q. And was Mr. McCabe still with you
15 when you encountered Mr. Serpico?

16 A. He was.

17 Q. Was anyone else present?

18 A. It was just the three of us.

19 Q. And where was this in the
20 offices?

21 A. Short of Bob's office, probably
22 closer to where Linda sits. I think it
23 might have been outside of Robert Nesmith's
24 door, but I can't recall. But it was in
25 that area.

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 2 Q. But it was your testimony that no
 3 one else was within earshot; is that
 4 correct?
 5 MR. SOLOTAROFF: Objection to the
 6 form.
 7 Q. Strike that. Was anybody else
 8 within earshot as far as you knew?
 9 A. People probably were in earshot.
 10 Q. Did you talk to anybody else
 11 about this encounter with Mr. Serpico?
 12 MR. SOLOTAROFF: Hold on, other
 13 than counsel, other than me.
 14 MR. TREMONTE: Yes, other than
 15 counsel.
 16 A. You mean at the office?
 17 Q. I mean anyone at all.
 18 A. My wife.
 19 Q. Anyone other than your wife?
 20 MR. SOLOTAROFF: We are not
 21 really supposed to consult. The only
 22 reason we can consult is if you have a
 23 question about attorney-client
 24 privilege.
 25 MR. TREMONTE: And I don't want

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 2 to invade privilege, so if you need to
 3 clear that up and need to consult, I'm
 4 not going to get in the way of that.
 5 A. Did I tell other people, yes.
 6 Q. Did you tell other people close
 7 in time to the event?
 8 A. Yes.
 9 Q. Who else did you tell?
 10 A. Um.
 11 MR. SOLOTAROFF: Let me interject
 12 to try to be helpful. I think you
 13 should be careful about BPCA's own
 14 attorney-client privilege here.
 15 MR. TREMONTE: Understood. And
 16 so for now, I just want to know the
 17 names of the people he spoke to and not
 18 the substance of communication and then
 19 we'll double back.
 20 MR. SOLOTAROFF: Okay.
 21 A. I'm not sure that -- I can't say,
 22 actually, I can't state certainly that I did
 23 say anything to anybody else.
 24 Q. You don't remember at this time?
 25 A. I can't clearly recall. I know

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 2 it came up in conversations afterwards. Not
 3 at that specific time, I can't say that
 4 clearly.
 5 Q. Let's just stay with that
 6 specific time for the moment. Did you have
 7 further discussions with Mr. McCabe about --
 8 A. Sure, yes.
 9 Q. When did you have further
 10 discussions with Mr. McCabe?
 11 A. It would be over drinks, it would
 12 be at the office that came up numerous time.
 13 Q. And so what did you and Mr.
 14 McCabe discuss on those occasions?
 15 A. Um, nothing specific. It's
 16 something that would come up in
 17 conversation, um, other than it came up, I
 18 can't say.
 19 Q. Do you remember what in sum and
 20 substance --
 21 A. Well, you have to understand.
 22 I'm going to, I was serving as the internal
 23 control officer and at the time as vice
 24 president of administration. And I have a
 25 CFO, who I'm at the time convinced has

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 2 colluded with somebody else to remove a
 3 blogger, even a disagreeable one at that,
 4 from his place of residence. I found that
 5 objectionable and that's something that I
 6 brought up in conversation.
 7 Q. And this conviction that you
 8 formed, I believe you said you became
 9 convinced; correct?
 10 A. The second I saw Bob's reaction
 11 to my question, yes.
 12 Q. Did you become convinced based on
 13 anything else that Bob said or did?
 14 A. You would have to, over a pattern
 15 of behavior over my tenure at the BPCA, it's
 16 certainly something that I would place in
 17 his capacity.
 18 Q. You placed in his capacity but I
 19 asked you a different question. Did
 20 anything else that Mr. Serpico did after
 21 that encounter in the hallway -- let's just
 22 break this down. Did he say anything
 23 further to you that further supported the
 24 conclusion that you drew from his gesture?
 25 A. No.

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Q. Did he do anything else that further supported your conclusion from his gesture?

A. The subject might have come up in subsequent conversations and would have elicited a similar response, an eye roll or something like that.

Q. You're saying "would have." Do you remember any specific instances?

A. I can remember one in his office, yes.

Q. Why don't you tell us about that.

A. The most I can recall is it would be sitting on his couch in his office and Mr. Greer came up in some offhand conversation and almost joking, it would be him getting kicked out of his apartment. And then some body language to the effect that I would take as confirming what I had seen previously from him.

Q. Do you remember the date of that --

A. No, I don't.

Q. Do you remember the time of year?

A. It would have been probably

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within two weeks.

Q. Of the encounter that you described earlier?

A. Yes.

Q. Was anyone else in the room?

A. I can't say certainly but I have a hunch Karl Koenig was, but I can't say that --

Q. And I apologize --

A. Karl Koenig, he's the controller.

Q. He was the controller at the time?

A. Yes.

Q. Did you have a discussion with Mr. Koenig afterwards about that?

A. No.

Q. Did Mr. Koenig say anything to you?

A. No, not that I could recall.

Q. Was anyone else there other than you and Mr. Koenig and Mr. Serpico?

A. I can't even state definitely that Karl was there but my recollection was that he may have been there.

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Q. Do you remember anything else? Was it early in the day, middle of the day, late in the day?

A. I can't recall.

Q. Do you recall any other topic that came up during that course of that conversation?

A. Maybe FEMA.

Q. Do you remember that with any degree of certainty or are you guessing?

A. That was probably a guess. Talked a lot about FEMA with Bob.

Q. Understood. Do you remember any other detail at all from that conversation?

A. No.

Q. Do you remember anything further about the subject matter of that conversation?

A. No.

Q. Did you react to this body language that you described by Mr. Serpico?

A. Did I react, no.

MR. SOLOTAROFF: Objection to the form. You can answer.

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A. No.

Q. Did you say anything to him about the conclusion that you had drawn from his gestures?

A. No.

Q. All right, so that's Mr. Serpico. Any further conversations with Mr. Serpico or involving Mr. Serpico where this came up?

A. No, not that I can recall.

There's a lot of banter and back and forth in any office so I can't state specifically that it did or didn't happen.

Q. You have no specific recollections of conversations with Mr. Serpico on this topic beyond what you've described to us?

A. No, I would not be surprised if I could go back in time and see instances, but those are the two that I can recall.

Q. And you can't recall any others specifically?

A. No.

Q. And for the court reporter's benefit, it's easier for Madam Court

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1 KIRK SWANSON - CONFIDENTIAL
 2 Reporter if you let me finish my question
 3 and then start your answer.
 4 A. Sure.
 5 Q. All right, so that's Mr. Serpico.
 6 Did you discuss Mr. Serpico's gestures and
 7 the conclusions you drew from those gestures
 8 with anyone else? I believe you said you
 9 had a conversation with your wife.
 10 A. Yes.
 11 Q. When was that?
 12 A. Shortly thereafter.
 13 Q. And what do you remember from
 14 that conversation?
 15 A. I can't recall specifically.
 16 Q. You don't recall any of the
 17 specific details?
 18 A. No.
 19 Q. Do you recall her reaction?
 20 A. You know, she thought it was bad.
 21 Q. And what gave that you
 22 impression?
 23 A. Well, I've been with the woman
 24 for 28 years. I understand her responses.
 25 Q. So you don't remember her

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1 KIRK SWANSON - CONFIDENTIAL
 2 conversations, um, no.
 3 Q. With anyone else, did you have a
 4 conversation with anyone other than Mr.
 5 Serpico, Mr. McCabe or your wife about Mr.
 6 Serpico's gestures and the conclusions you
 7 drew from them?
 8 MR. SOLOTAROFF: Other than me
 9 and do you want, you're okay if it's
 10 BPCA counsel.
 11 Q. It's a yes or no. Did you have
 12 conversations with other people on the same
 13 topic, including lawyers, anyone in the
 14 world?
 15 MR. SOLOTAROFF: Other than me.
 16 Q. Other than Mr. Solotaroff.
 17 A. I would have to say no.
 18 Q. Did you ever send an e-mail on
 19 this topic?
 20 A. No.
 21 Q. Did you ever write anything
 22 concerning this topic?
 23 MR. SOLOTAROFF: Other than, I'm
 24 sorry, I should have objected, an
 25 e-mail to anyone other than me and a

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1 KIRK SWANSON - CONFIDENTIAL
 2 specific response?
 3 A. I don't remember a specific
 4 response. I do know I told her and I know
 5 she reacted negatively.
 6 Q. And, again, I don't mean to be
 7 out of line but it's hard for the court
 8 reporter --
 9 MR. SOLOTAROFF: Let me just say
 10 this. Generally and Dr. Greer doesn't
 11 know this but generally we give
 12 instructions at the beginning and the
 13 most important instruction is for you
 14 to make sure that you wait for the
 15 attorney to finish asking the question
 16 before you answer it, so nobody is
 17 speaking over each other. I should
 18 have given you that before we started,
 19 my fault.
 20 Q. Any further conversations with
 21 your wife on this topic?
 22 A. Hundreds.
 23 Q. That you specifically recall?
 24 A. That I specifically recall. How
 25 do you recall specifically hundreds of

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1 KIRK SWANSON - CONFIDENTIAL
 2 writing to anyone other than me.
 3 A. No.
 4 Q. And you have spoken to Mr. Greer
 5 about this; correct?
 6 A. Yes.
 7 DR. GREER: Objection, about
 8 what?
 9 Q. You have spoken to Mr. Greer
 10 about the conversation you had with Mr.
 11 McCabe, the encounter with Mr. Serpico, his
 12 gestures and the conclusion you drew from
 13 that; correct?
 14 MR. SOLOTAROFF: Objection. You
 15 can answer.
 16 A. Yes.
 17 Q. Okay, when?
 18 A. Oh, I can't specifically date it.
 19 Q. Approximately?
 20 A. I would say a year ago, maybe.
 21 Q. And did Mr. Greer reach out to
 22 you or did you reach out to him?
 23 A. Mr. Greer reached out to me.
 24 Q. How did he reach out to you?
 25 A. Mr. Greer e-mails, texts and

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1 KIRK SWANSON - CONFIDENTIAL
2 phones.

3 Q. Did he reach out to you by text?

4 MR. SOLOTAROFF: Objection to the
5 form.

6 Q. We can cut to the chase. How did
7 he reach out to you?

8 A. About what?

9 Q. About the subject matter of your
10 testimony --

11 A. This would come out in phone
12 conversation.

13 Q. Were you having frequent phone
14 conversations at the time about a year ago?

15 A. Not frequent.

16 Q. About how often?

17 A. Well, there would be stretches
18 where there weren't any calls and then there
19 would be stretches where he would call me
20 three or four times a week.

21 Q. Did those calls begin when you
22 were still employed by the BPCA?

23 A. No, I didn't, no.

24 MS. RIEGEL: Can I note for the
25 record that Dr. Greer is making head

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1 KIRK SWANSON - CONFIDENTIAL
2 gestures while the witness is
3 testifying and I would request that you
4 not do that, given that the witness is
5 testifying about you.

6 MR. SOLOTAROFF: Let me just
7 state for the record that I think Mr.
8 Swanson was looking past Dr. Greer
9 during that, so I want to make sure
10 there is no --

11 MS. RIEGEL: My issue was not
12 with Mr. Swanson.

13 MR. SOLOTAROFF: Okay.

14 DR. GREER: Objection. I was not
15 shaking my head no.

16 Q. So Mr. Swanson, your phone
17 conversations with Mr. Greer began after you
18 left the BPCA; correct?

19 A. Yes.

20 Q. Did you initiate those?

21 A. No.

22 Q. Mr. Greer initiated them?

23 A. Yes.

24 Q. Do you remember how he initiated
25 them?

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1 KIRK SWANSON - CONFIDENTIAL

2 A. By phone, left message.

3 Q. He would call you up and say he
4 wanted to talk?

5 A. Yes.

6 Q. And when did this subject
7 relating to Mr. Serpico come up for the
8 first time?

9 A. I can't state with any certainty,
10 probably sometime in 2015.

11 Q. How did it come up?

12 A. He asked me.

13 Q. And so you related to him the
14 substance of the testimony you gave today?

15 A. Yes.

16 Q. Anything else on that topic?

17 A. On that topic? On -- I don't
18 understand.

19 Q. Did you have any further
20 discussion about the topic of Mr. Greer's
21 eviction?

22 A. There was, he would go off on
23 various tangents, yes.

24 Q. Like what?

25 A. I can't definitely recall.

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1 KIRK SWANSON - CONFIDENTIAL

2 Q. Did he ask you for information?

3 A. Sure.

4 Q. And did you provide him with any
5 documents?

6 A. No.

7 Q. Have you since provided him with
8 any documents?

9 A. No.

10 Q. Have you ever provided him with
11 any documents?

12 A. I have not.

13 MR. TREMONTE: I ask that we take
14 another short break.

15 DR. GREER: I have some
16 questions.

17 FURTHER EXAMINATION BY
18 DR. GREER:

19 Q. I forgot to ask you, remind me
20 again, you left the BPCA when, what year,
21 it's 015; right?

22 A. No, '14.

23 Q. 014, in what month?

24 A. Terminated while I was fired in
25 April and I had a telecommuting group in

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1 KIRK SWANSON - CONFIDENTIAL
2 May, May 22nd, I believe.

3 Q. While you were still there, did
4 you ever see the BPCA not allow me into a
5 board meeting? I'm losing track of time.

6 A. No.

7 Q. That happened later, okay.

8 MR. TREMONTE: Okay. We'll take
9 a break, I'm not sure if we have more
10 questions but we may.

11 ***

12 (Whereupon, a recess was taken
13 at this time.)

14 ***

15 DR. GREER: I have nothing.

16 MR. TREMONTE: I have no further
17 questions.

18 MS. RIEGEL: I have questions.

19 EXAMINATION BY

20 MS. RIEGEL:

21 Q. Mr. Swanson, you testified
22 earlier, I believe, that you know Steve
23 Rossi?

24 A. I've met him, I'm acquainted with
25 him, I don't know him intimately or in a

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1 KIRK SWANSON - CONFIDENTIAL
2 friendly manner.

3 Q. Could you tell me approximately
4 how many times you think you've met him?

5 A. A couple of dozen.

6 Q. And most recently do you recall
7 when that was?

8 A. No, I couldn't tell you the most
9 recent occasion.

10 Q. And could you tell me if you
11 recall approximately when you first met him?

12 A. It was shortly after I started.

13 Q. Did you have any conversations
14 with Mr. Rossi with respect to Dr. Greer's
15 eviction?

16 A. No.

17 Q. Do you know Howard Milstein?

18 A. No.

19 Q. Never met him?

20 A. No.

21 Q. Never spoke to him?

22 A. Not unless, no, I mean, no.

23 Q. Do you know Janet Martin?

24 A. No.

25 Q. Never met her or spoken to her

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1 KIRK SWANSON - CONFIDENTIAL
2 either?

3 A. I met a lot of people. I can't
4 put a name to the face.

5 Q. But that you recall, you've never
6 met or spoken to her?

7 A. Right.

8 Q. But then would it be true that
9 you have never spoken to either Howard
10 Milstein or Janet Martin about Dr. Greer's
11 eviction?

12 A. I have not.

13 DR. GREER: When do I reply to
14 your questions?

15 MS. RIEGEL: When I'm finished.

16 MR. SOLOTAROFF: Everybody gets
17 their chance.

18 Q. Over the course of your tenure at
19 the Battery Park City Authority, you
20 received various e-mails from Dr. Greer; is
21 that fair to say?

22 A. No, while I was at BPCA I don't
23 think I got any e-mails from Dr. Greer.

24 Q. And once you left BPCA, did you
25 receive e-mails from Dr. Greer?

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1 KIRK SWANSON - CONFIDENTIAL
2 A. After some time, yes.

3 Q. And approximately how many
4 e-mails would you say you've received from
5 Dr. Greer?

6 A. Hundreds, if not thousands. I
7 think, but I mean he's got a blast list so
8 there's a lot of e-mails.

9 Q. So is it fair to say that the
10 hundreds, if not thousands, of e-mails that
11 you got from Dr. Greer were not necessarily
12 solicited e-mails?

13 A. No, they weren't solicited.

14 Q. What e-mail address were those
15 e-mails sent to, do you recall?

16 A. I have a Gmail address.

17 Q. And is that the only e-mail
18 address you use?

19 A. I also have the Roadrunner e-mail
20 but I use primarily the Gmail address.

21 Q. Could you tell what those two
22 e-mail addresses are?

23 A. Kirkaswanson@gmail.com,
24 kjswanson@nyc.rr.com.

25 MR. SOLOTAROFF: On the record,

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1 KIRK SWANSON - CONFIDENTIAL
2 let me just request that that portion
3 of the transcript be marked as
4 confidential.

5 MS. RIEGEL: No objection.

6 MR. TREMONTE: No objection.

7 Q. Have you ever used an e-mail
8 address mrcoffee53@gmx.com?

9 A. No.

10 Q. And have you ever used a screen
11 name or an internet, or any kind of internet
12 presence in the name of Juan Valdez,
13 J-u-a-n, V-a-l-d-e-z?

14 A. No.

15 Q. So with respect to the conspiracy
16 that you believe was formed between Battery
17 Park City and the real estate defendants,
18 you don't have any information with respect
19 to any action on the real estate defendant's
20 side, your conclusion is based on your
21 interaction with Mr. Serpico; correct?

22 MR. SOLOTAROFF: Objection to the
23 form. You can answer.

24 A. Repeat the question.

25 Q. You don't have any information

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1 KIRK SWANSON - CONFIDENTIAL
2 with respect to the conspiracy that you
3 believe existed from the real estate
4 defendants' side, and by that I mean
5 Milford, Mr. Milstein, Mr. Rossi. Your
6 conclusion is based on the reactions that
7 you observed from Mr. Serpico; correct?

8 MR. SOLOTAROFF: Objection to the
9 form. You can answer.

10 A. Well, apart from observing Mr.
11 Rossi and Bob having conversations, no.

12 Q. You are aware that Milford
13 Management manages multiple buildings --

14 MS. RIEGEL: Withdrawn.

15 Q. Are you aware that Milford
16 Management managed multiple buildings during
17 your tenure in Battery Park City Authority;
18 correct?

19 A. Yes.

20 Q. And you're aware that as the
21 managing agent for many of those buildings,
22 which are condominiums, Mr. Rossi was
23 responsible for the collection of ground
24 rent, PILOT and civic facilities charges due
25 to Battery Park City Authority; correct?

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1 KIRK SWANSON - CONFIDENTIAL
2 MR. SOLOTAROFF: Objection.

3 A. Yes.

4 Q. And you are also aware that Mr.
5 Serpico in his capacity as CFO was
6 responsible for the collection of those
7 charges; right?

8 A. Yes.

9 Q. You testified just now that you
10 got hundreds, if not thousands, of e-mails
11 from Dr. Greer. How many e-mails, if you
12 recall, did you send to Dr. Greer or how
13 many times did you respond to Dr. Greer's
14 e-mails?

15 A. E-mails, probably less than ten
16 if not less than five.

17 Q. And do you have copies of those
18 e-mails?

19 A. Jason has it.

20 MS. RIEGEL: I'm going to call
21 for their production, if you have them
22 here with you.

23 MR. TREMONTE: We subpoenaed
24 them.

25 MR. SOLOTAROFF: I don't have

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1 KIRK SWANSON - CONFIDENTIAL
2 them in paper form.

3 MR. TREMONTE: My understanding
4 is we're making arrangements to get
5 them.

6 MR. SOLOTAROFF: I will forward
7 them to you.

8 MS. RIEGEL: That's fine.

9 MR. TREMONTE: Okay.

10 MS. RIEGEL: I think I'm done.

11 FURTHER EXAMINATION BY
12 DR. GREER:

13 Q. Is Steve Rossi the only building
14 manager or whatever title you prefer to call
15 him -- if somebody works for a private
16 sector or landlord real estate company such
17 as Mariners Cove, Steve Rossi was a senior
18 executive in that, but there are other
19 condos within Battery Park City Authority,
20 other buildings not controlled by Howard
21 Milstein and so forth.

22 Is Steve Rossi pretty much the
23 only one you saw Robert Serpico interacting
24 with or did you see other landlord-related
25 people?

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1 KIRK SWANSON - CONFIDENTIAL
 2 A. Oh, I saw other landlord-related
 3 people.
 4 Q. Okay, has the Battery Park City
 5 Authority ever exerted any authority, if it
 6 exists, to evict an individual residential
 7 tenant without the approval or cooperation
 8 of the building owner?
 9 MR. TREMONTE: Objection to form.
 10 MS. RIEGEL: Objection.
 11 MR. SOLOTAROFF: You can answer.
 12 A. Repeat the question one more
 13 time.
 14 Q. Has the Battery Park City
 15 Authority, to your knowledge, ever bypassed
 16 someone such as Howard Milstein, Mariners
 17 Cove, Milford Management and directly
 18 evicted an individual residential tenant
 19 without the cooperation of the landlord?
 20 A. No.
 21 MR. TREMONTE: Same objection.
 22 Q. Do you know if that possibility
 23 or power would even exist for the Battery
 24 Park City Authority to evict someone like
 25 myself without the cooperation of someone

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1 KIRK SWANSON - CONFIDENTIAL
 2 like Steve Rossi?
 3 MS. RIEGEL: Objection.
 4 MR. TREMONTE: Objection.
 5 A. If that power exists, I don't
 6 know, it would be very troubling.
 7 DR. GREER: That's all.
 8 MR. TREMONTE: That's all I have.
 9 MS. RIEGEL: We're done.
 10 MR. SOLOTAROFF: Thank you
 11 everyone.
 12 ***
 13 (Whereupon, the deposition of
 14 Kirk Swanson was concluded at 3:08
 15 p.m.)
 16
 17
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1
 2 A C K N O W L E D G M E N T
 3
 4 I, Kirk Swanson, hereby certify
 5 that I have read the transcript of my
 6 testimony taken under oath in my deposition
 7 of March 21, 2017; the transcript is a true,
 8 complete record of my testimony and that the
 9 answers on the record as given by me are
 10 true and correct.
 11
 12 _____
 13 KIRK SWANSON
 14
 15 _____
 16 Subscribed and sworn to
 17 before me this _____
 18 day of _____,
 19 2017.
 20
 21 _____
 22 Notary Public
 23
 24
 25

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1 I N D E X
 2
 3 WITNESS: KIRK SWANSON
 4 EXAMINATION BY DR. GREER 5
 5 EXAMINATION BY MR. TREMONTE 25
 6 EXAMINATION BY DR. GREER 41
 7 EXAMINATION BY MS. RIEGEL 42
 8 EXAMINATION BY DR. GREER 49
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 11 E X H I B I T S
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CERTIFICATION

I, Pessi Goldstein, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of March 2017.

PESSI GOLDSTEIN

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg. No. Now Reads Should Read Reason

6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
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18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2017.

(Notary Public) MY COMMISSION EXPIRES: _____

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